



Crl.M.P.No.17117 of 2023 in Crl.A.No.176 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2023

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.17117 of 2023
in Crl.A.No.176 of 2023

Panneerselvam,
S/o.Kaliyaperumal

... Petitioner

Vs.

State by
The Inspector of Police,
Kattumannarkoil Police Station,
Kattumannarkoil, Cuddalore District.
Cr.No.340 of 2020.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the conviction and sentence imposed on the petitioner in Spl.S.C.No.38 of 2020, dated 29.12.2022 on the file of the Special Court (POCSO) Act, Cuddalore, Cuddalore District and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.C.Prakasam
For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the judgment, dated 29.12.2022 in Special S.C.No.38



of 2020 by the learned Sessions Judge, Special Court (POCSO Act),
Cuddalore and enlarge him on bail pending disposal of the main appeal.

2.The conviction and sentence imposed against the petitioner/A2 by
the Trial Court is as follows:

- For offence under Section 294(b) of IPC, the petitioner/A2 and A1 were imposed fine of Rs.500/- each, in default to undergo one month Simple Imprisonment each.
- For offence under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, the petitioner/A2 and A1 are convicted and sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.10,000/- each, in default to undergo three months Simple Imprisonment each.
- For offence under Sections 9(g) and 10 of the Protection of Children from Sexual Offence Act, 2012, the petitioner/A2 and A1 are convicted and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.2,000/- each, in default to undergo three months Simple Imprisonment each. Challenging the same, the petitioners preferred an appeal and the Suspension of Sentence.



3.The gist of the case is that in this case, the victim girl, daughter of PW1 and PW2, aged about 17 years was studying school at the time of occurrence. The victim girl was suffering from Chronic Asthmatic patient used to have regular wheezing problem. To visit the hospital, the victim girl and her parents (PW1 & PW2) used to travel by A1's Auto and they became friendly. Taking advantage of the same, when the victim girl was alone at home, the petitioner along with his friend/A2 visited the house of PW1 and PW2 at about 06.00 p.m., picked up a quarrel with her and attempted to outrage her modesty. A1 claiming himself to be his wife and A2 threatened that who dare will come and intervene, A2 asked A1 to take his wife. Thereafter, the father of the victim girl (PW1) intervened, who was beaten and PW2 was also abused. The victim girl unable to tolerate insult any further rushed to the room and attempted to commit suicide by hanging using her duppatta. PW3 to PW7 who are near the scene of occurrence brought the victim girl down, took her to the Government Hospital where PW11 admitted and gave treatment. PW13 is the Headmaster who confirmed the age of the victim girl is of 13 years at the time of occurrence. PW12 is the Head Constable who recorded the statement of the witnesses in



the laptop aided PW14/Investigating Officer. PW10 is the Grade-I Constable received the complaint (Ex.P1) from the victim girl and signed C.S.R.No.124 of 2020. PW8 and PW9 are the witnesses to the Observation Mahazar (Ex.P11) and Rough Sketch (Ex.P12). On the complaint (Ex.P1) of the victim girl, PW13 registered FIR (Ex.P10) in Crime No.340 of 2020, took up investigation, completed the same and filed the charge sheet.

4.During trial, on side of the prosecution, sixteen witnesses examined as PW1 to PW16 and fourteen documents marked as Exs.P1 to P14. On the side of the defence, two witnesses examined as DW1 & DW2, but no document marked. The Trial Court marked one document as Ex.C1. On completion of trial, the Trial Court convicted the petitioner/A2 as stated above.

5.The contention of the petitioner/A2 is that the petitioner/A2 has been falsely implicated in this case and they have not committed any offence as alleged the prosecution. He further submitted that the petitioner and the victim girl were interested with each other which was opposed by



her parents (PW1 and PW2) who harassed her and pushed her to commit suicide. This had happened much later on 06.02.2021. To cover up their misdeeds, earlier complaint (Ex.P1) has been lodged against the petitioner and A1. The occurrence which is connected to the petitioner is dated 04.06.2020 and the victim girl committed suicide on 06.02.2021. In this case, except the parents of the victim girl (PW1 and PW2), no other witnesses supported the case of the prosecution, namely, PW3 to PW7 who are supposed to be present on 04.06.2020 at about 09.00 p.m., and saw the victim girl attempted to commit suicide, rescued her and took her to the Government Hospital for treatment before PW11. PW7 is the person who is said to have informed the parents of the victim girl (PW1 and PW2) about taking her to the hospital and giving treatment, but he was declared hostile. PW8 and PW9 are the witnesses for Observation Mahazar (Ex.P11) and Rough Sketch (Ex.P12) who have not supported the case of the prosecution. The other witnesses are official witnesses. Thus, in this case, there is no tangible evidence to link the petitioner to the alleged occurrence, but on the contrary, the Trial Court not considered these aspects and convicted the petitioner.



6.He further submitted that the petitioner earlier filed a bail application along with A2 in Crl.M.P.No.2661 of 2023 in Crl.A.No.176 of 2023 in which this Court granted bail on 02.03.2023. As regards this petitioner is concerned, the petition was dismissed as withdrawn since the respondent Police objected that the petitioner has got 12 previous cases. Later the petitioner came to know that in all the 12 cases, the petitioner got acquittal in four cases, four cases referred as Mistake of Fact, one case not taken on file, and in one case, the petitioner was convicted with fine sentence of Rs.1,500/- and two cases are pending in which one at the stage of PRC. The petitioner being the political activist fighting for the marginalized people and he is also a ward member questioning the then people who are governing the Panchayat who had misappropriated and misused the Panchayat funds. Due to which, the petitioner raised objection. Hence, he has been falsely implicated and several cases registered against him.

7.The learned Additional Public Prosecutor appearing for the respondent Police strongly opposed this petition submitting that the



petitioner's earlier bail application was dismissed on 02.03.2023. In this case, on the complaint of the victim girl, a case in Crime No.340 of 2020 registered against the petitioner/A2 and A1 for offence under Sections 294(b), 341, 324, 506(ii) of IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, 2002 and Section 7 and 8 of the Protection of Children from Sexual Offence Act, 2012. PW1 and PW2 are the parents of the victim girl. The occurrence in this case took place on 04.06.2020, at that time, the petitioner/A1 and A2 went to the house of the victim girl, picked up a quarrel with her and attempted to outrage her modesty by A1 claiming her to be his wife and compelled her to come along with him and dragged her knowing very well that she was a minor and school going child. A2 in this case is a muscle man, who supported the petitioner/A1 to commit the offence. When PW1 came to rescue his daughter, he was also assaulted, thereafter, the victim girl attempted to commit suicide and later, she was saved but the harassment continued. Finally on 06.02.2021, the victim girl committed suicide and ended her life. During trial, on side of the prosecution sixteen witnesses examined as PW1 to PW16 and fourteen documents marked as Exs.P1 to P14. On the side of



the defence two witnesses examined as Exs.D1 & D2, but no document marked. On completion of trial, the Trial Court convicted the petitioner/A2 and A1 as stated above. He further submitted that the petitioner has got 12 previous cases, but fairly submitted that except two cases, all the other cases he got acquittal and cases referred as Mistake of Fact. He further submitted that A1 in this case was granted bail by this Court in Crl.M.P.No.2661 of 2023 in Crl.A.No.176 of 2023.

8.Considering the submissions and on perusal of the materials, it is seen that in this case, A2 was granted bail by this Court on 02.03.2023 in Crl.M.P.No.2661 of 2023 in Crl.A.No.176 of 2023. At that time, the petitioner withdrew his petition for the reason that 12 cases were pending against him. Later, it was found that of the twelve cases, except for two cases, all the other cases, the petitioner got acquittal and cases referred as Mistake of Fact. As regards other two cases, the petitioner not suffered with any adverse judgment. In this case, except the parents PW1 and PW2, no other witnesses stated anything against the petitioners and not supported the case of the prosecution. Added to it, there is also discrepancy in the manner



in which the the victim girl on 04.06.2020 taken to the hospital and thereafter, information received by PW1 and PW2. At the time of occurrence, the peak of COVID-19 situation cannot be lose sight of.

9.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner/A2 is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the trial Court.

10.Further, the petitioner/A2 shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the Trial Court on that day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of his absence as directed by the Trial Court. Accordingly, this Miscellaneous Petition is ordered.

06.12.2023

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M. NIRMAL KUMAR., J.

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To

- 1.The Sessions Judge, Special Court (POCSO Act),
Cuddalore.
- 2.The Inspector of Police,
Kattumannarkoil Police Station,
Kattumannarkoil, Cuddalore District.
- 3.The Superintendent,
Central Prison, Cuddalore.
- 4.The Public Prosecutor,
High Court, Madras.

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